

**JAPAN'S SUBMISSION TO
PRIVACY PROTECTION IN THE APEC ECONOMIES
MAPPING EXERCISE**

**APEC ELECTRONIC COMMERCE STEERING GROUP
JUNE 20, 2002**

FRAMEWORK FOR DATA PRIVACY

Legal Privacy Infrastructure

1. (a) Do you have any national laws relating to the protection of privacy and personal data by the government or the private sector? If not, are any such laws in development?

In Japan the Bill on the Protection of Personal Information (hereafter Personal Information Protection Bill) has been submitted to the Diet.

(b) If you do have national laws relating to the protection of privacy and personal data, please indicate if they are omnibus laws, general framework legislation subject to specific implementation by public authorities, sector laws targeted at specific information types, users, or business activities, or a combination of these approaches. Are any of these applicable laws available on a Web site? If so, please provide the URL(s).

The Personal Information Protection Bill will establish basic principles common to private and public entities and stipulate obligations that private entities shall comply with.

(c) Do these laws differentiate between requirements that are applicable to government versus those that deal with private sector collection of information, and/or do separate laws or regulations apply to government collected personal data?

The Act for Protection of Computer Processed Personal Data held by Administrative Organs currently applies to the public sector. A bill for the revision of this Act, the Bill on the Protection of Personal Information held by Administrative Organs, and other related bills have been submitted to the Diet.

(d) Are there any privacy rights inherent in any laws, though not the subject of such laws?

The Japanese Constitution stipulates respect for individuals and right to pursue well-being, which are regarded as ground for the protection of personal information.

2. Do you have other legal regulations or guidance on the protection of privacy and personal data (such as administrative rules or regulations, decrees, ordinances, case law or other jurisprudence)? If not, are any such legal regulations in development?

The Ministry of Economy, Trade and Industry (METI) sat up the Guideline concerning the Protection of Computer Processed Personal Data in the private sector (METI guidelines; June, 1998). In addition, the METI also established the Japanese Industrial Standard, "Requirements for Compliance Program on Personal Information Protection (JISQ15001; March 1999)" to promote self-regulation of individual business entities and to make them more effective.

About 60 % of the local governments have their own ordinances on the protection of personal protection.

The Ministry of Public Management, Home Affairs, Posts and Telecommunications (MPHPT) has decided upon and released "Guidelines on the protection of Personal Data in Telecommunications Business" about the protection of personal data of a telecommunication business. (Notification No. 570, 1998 of Ministry of Posts and Telecommunications) Moreover, communication between individuals among personal information on telecommunication field is protected as the secrecy of communication in Article 4 of Telecommunications Business Law.

3. How and to what extent do laws and regulations identified in questions 1-2 affect the ability to transfer data across your national borders?

The METI guidelines, JISQ15001 and the Personal Information Protection Bill can be applied in the cases in which personal data handling entities transfer personal data to the third parties, including when the third parties are located abroad.

Also in the guideline of the MPHPT, there is no regulation related to a transfer data across the national borders.

4. Do the laws and regulations identified in questions 1-2 pertain to off-line data as well as to on-line data? Please describe the type(s) of data to which the laws and regulations identified in questions 1-2 apply. For example, do they apply to human resources or consumer data?

The METI guidelines and JISQ15001 don't matter whether personal data is on-line or off-line. That is, the METI guidelines and the Personal

Information Protection Bill may be applied to personal Information, which is defined as any information relating individual including information that enables the identification of an individual, including both on-line and off-line data.

In the guideline of the MPHPT, the whole personal data, which a telecommunications service operator holds is protected, without distinguishing on-line data or off-line data.

5. What entities, organizations or persons are responsible for developing, implementing, monitoring, and enforcing the laws, regulations, and policies related to privacy and personal data identified in questions 1-2?

While the private sector has voluntarily implemented the METI guidelines and JISQ15001, Japan Information Processing Development Corporation (JIPDEC) is enforcing Privacy Mark System that is based on JISQ15001.

The Personal Information Protection Bill stipulates that the ministers with jurisdiction over the businesses conducted by entities handling personal information oversee the handling of personal information by the entities.

About the guideline of the MPHPT, MPHPT gives instruction and advice to the related entities. Since there is no legal force in a guideline, even if the fact of violation is revealed, administrative guidance remains for the ability doing.

6. How does each entity, organization, or person identified in question 5 implement or enforce the laws and regulations references in questions 3-4? For example: through encouraging voluntary compliance, codes of conduct and other self-regulatory means? Through the promulgation of regulations or guidance? Through consumer and business education? Through the issuance of administrative, civil, or criminal order, including injunctive relief, fines, or penalties? Through monetary compensation (redress) for injured parties?

Regarding enforcement of Privacy Mark System, JIPDEC has the examination process and approval standards. Applicants can be granted the privacy mark only if they pass the standards. In order to keep the proper operation of the system, if necessary, JIPDEC may demand a private enterprise using the mark to submit a report on handling and protecting personal information and the use of the mark. Based on the report, it may also recommend or request the enterprise to take necessary measures such as measures to improve the handling and protection of personal information and the use of the mark.

Under the Personal Information Protection Bill, competent ministers may collect a report from and give recommendation to the entities handling

personal information. Competent ministers also may give advices the entities of suspension of infringement and order them to take the advised measures in case they have not taken the measures.

About the guideline of the MPHPT, required instruction and required advice are performed by the MPHPT. Since there is no legal force in a guideline, even if the fact of violation is revealed, fundamentally, administrative guidance remains for the ability doing.

7. To what extent are violations of the privacy laws and regulations identified in questions 3-4 made publicly available? What organization, entity, or person is responsible for such publicity and how is it generally accomplished?

The Personal Information Protection Bill has no provision that publishes entities in breach of obligations.

8. Are there cases of enforcement of privacy laws in your Economy? If so, please provide some illustrative examples.

. There is no case concerning our bill since it has not been enacted

Self-Regulation

9. (a) In your jurisdiction, are there any private sector codes of conduct, guidelines, best practices or seal or trustmark programs relating to the protection of privacy or personal data that are endorsed by a business federation or widely used by the private sector? If so, please provide examples of entities, organizations or persons that are involved in these programs.

See answer to 2. Besides it, each business sector has its own guidelines based on the METI and MPHPT guidelines.

There is the TRUSTe Japan Privacy Seal Program of the TRUSTe Japan, which is a private organization within Japan Engineers Federation(JEF), a non profit organization.

The Japan Computer Communications Association, a non profit organization, established the “Personal Data protection and Registration Center” in April 1998 and inaugurated the “Personal Data protection Mark System.”

- (b) If not, are you aware of any efforts underway toward the development of such self-regulatory programs?

In the telecommunication field, it is decided upon the guideline with each corporation object in accordance with the guideline of the MPHPT. In Telecommunications Carriers Association (TCA), it is decided upon "the action agenda for protection of personal information" (December 7, 1999) based on the guideline of the MPHPT.

(c) To what extent do organizations participate in these programs or initiatives?

N/A

10. Are any of the initiatives identified in question 1(a) endorsed by a governmental entity? Is there a requirement that these programs be recognized by a governmental entity? Are any of them subject to government enforcement as a regulatory backstop?

N/A

11. Are their dispute resolution fora and mechanisms available for data privacy?

N/A

EDUCATIONAL EFFORTS

12. Are there any private sector, NGO, and/or governmental efforts to educate the public on their privacy rights? What entities, organizations, or persons are involved in these efforts?

The Ministry of Foreign Affairs puts Japanese translation of the "OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data" onto the Ministry's Web page (<http://www.mofa.go.jp/mofaj/gaiko/oecd/privacy.html>).

The METI has made efforts to protect the personal data in the private sector through diffusion of the METI guidelines. In addition, JIPDEC annually holds a symposium about protection of the personal data in the private sector.

13. Are there any private sector, NGO, and/or governmental efforts to educate business about how to comply with the privacy laws and regulations listed in questions 1-2? What entities, associations, organizations, or persons are involved in these efforts?

See answer to 12.

14. What private sector, NGO and/or governmental guidance exists to assist companies in establishing privacy policies? What entities, organizations, or persons are involved in providing such guidance?

JIPDEC requires any applicants for the privacy mark to make their own guidelines regarding protection of personal information.

15. To what extent are technological solutions for privacy protection (privacy enhancing technologies or “PETS”) used in your country by businesses and consumers? For example, security features, such as a firewall, encryption technologies, and/or privacy policy generators. Are there any efforts to educate the public about these technologies? If so, please provide examples of entities, organizations, or persons involved in these efforts.

New Media Development Association is making efforts to diffuse the Platform for Privacy Preference Project. The Platform for Privacy Preferences Project (P3P), developed by the World Wide Web Consortium, is emerging as an industry standard providing a simple, automated way for users to gain more control over the use of personal information on Web sites they visit.

ASSESSMENT

16. Are there any independent reports or government studies in your jurisdiction concerning the costs, benefits, or other effects of privacy laws and regulations and their enforcement?

N/A

17. Are there any studies in your jurisdiction concerning privacy self-regulation models or mixed models involving regulation with a law enforcement backstop?

N/A

(end)